

Notice of Allowability**Application No.**

10/569,847

Applicant(s)

HAN ET AL.

Examiner

FEREYDOUN G. SAJJADI

Art Unit

1633

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/12/2009.
2. ☒ The allowed claim(s) is/are 1,7-15 and 21-25.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying Indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date ____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date ____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other ____.

/Fereydoun G Sajjadi/
Primary Examiner, Art Unit 1633

DETAILED ACTION

Claim Status

Applicants' amendment filed November 12, 2009, in response to the Office action dated May 12, 2009 has been entered. Claims 1, 7, 15, 20 and 25 have been amended and claims 2-6 cancelled. No claims were newly added. Accordingly, claims 1 and 7-25 remain pending in the application. Claims 16-19 stand withdrawn from further consideration without traverse, as being drawn to non-elected subject matter.

Claims 1, 2, 4-10, 12-15 and 20-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Baguisi et al. (U.S. Patent Publication No.: 2002/0162134 effective filing date: Feb. 16, 2001), in view of Shinohara et al. (PNAS 97:8346-8351; 2000); and claims 1, 3 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Baguisi et al. (U.S. Patent Publication No.: 2002/0162134 effective filing date: Feb. 16, 2001), in view of Shinohara et al. (PNAS 97:8346-8351; 2000), as applied to claims 1, 2, 4-10, 12-15 and 20-25 above, and further in view of Shinohara et al. (U.S. Patent Publication No: 2006/0265774; effective filing date April 15, 2003). Applicants' cancellation of claims 2-6 renders their rejections moot. Applicants have amended base claims 1, 20 and 25 to recite method steps and culture conditions not expressly disclosed by any one of the cited references. Additionally, Applicants' arguments regarding the increase in the number of colonies of avian SSCs being increased by about 14-fold using the culture medium instantly claimed are found persuasive. As the fold increase in the number of colonies of SSCs would not have been expected from the teachings of the cited references, the rejections are hereby withdrawn.

The restriction requirement between the species of Group I claims as set forth in the Office action dated April 9, 2007 has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Accordingly, all withdrawn species have been rejoined.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Susan M. Michaud, on February 8, 2010.

The application has been amended as follows:

In the claims,

Claim 1 has been amended as follows:

The word "adult" has been deleted in the first line.

Claims 16-20 have been cancelled.

Claims 21 and 23 have been amended as follows:

The words "claim 20" have been replaced with the "claim 1", in the first lines.

REASONS FOR ALLOWANCE:

The following is an examiner's statement of reasons for allowance:

While the prior art references of record describe the culture of SSCs in DMEM-B medium, the method of the instant claims as amended requires DMEM-C medium, that as described in Applicants' specification resulted in an increase of about 14-fold in the number of colonies obtained. Such is considered an unexpectedly superior result that could not have been predicted.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 1, 7-15 and 21-25 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FEREYDOUN G. SAJJADI whose telephone number is (571)272-3311. The examiner can normally be reached on 6:30 AM-3:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Weitach can be reached on (571) 272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.